THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.9860 of 1998

Dated : 09.04.2007

Between:

S.Srinivas Reddy S/o Narayan Reddy

... **PETITIONER**

And:

The Subordinate Judge, Medak, Medak District,
and another.

....**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.9860 of 1998

ORDER:

This writ petition is filed questioning the order of the first respondent dated 21.10.1997 passed in C.M.A.No.7 of 1995, whereunder, the first respondent confirmed the order of the second respondent dated 26.06.1995.

It is the case of the petitioner that in the year 1982, there was an oral partition between himself and his brothers, and pursuant to that his brothers relinquished their right in respect of the property, which fell to the share of the petitioner, through a registered Relinquishment Deed Dated 07.09.1982. However, the Joint Sub-Registrar, Sangareddy, preferred a reference to the second respondent under Section 47-A of the Indian Stamp Act 1899, (for short "the Act") for determining the market value of the property involved in the relinquishment deed, construing it as a sale deed. Pursuant to the same, the second respondent issued notices dated 07.02.1990 and 26.02.1990 to the

petitioner, and after conducting enquiry, passed an order on 26.06.1995, determining the market value of the property as Rs.1,86,050.00 and directing the petitioner to pay the stamp duty at Rs.18,627.50. Aggrieved thereby, the petitioner preferred an appeal, being C.M.A.No.7 of 1995, before the first respondent. The first respondent, by an order dated 21.10.1997, dismissed the appeal and thereby confirmed the order of the second respondent. Questioning the same, this writ petition is filed.

Despite service of notice, the respondents have no chosen to file counter.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

The main contention put forth by the learned counsel for the petitioner is that the second respondent ought not to have exercised his powers, after a lapse of more than eight years from the registration of the document, and according to him the second respondent became functus officio, and he further submits that even the Collector can exercise suo motu powers only within two years from the date of registration under sub-section (3) of Section 47-A of the Act. In this context, the learned counsel has also drawn my attention to one of the judgments of this Court reported in ***Kasarla Narayana Reddy v. District Revenue Officer, Nalgonda***[1] and also the judgment of the Punjab and Haryana High Court in ***Abhinav Kumar v. State of Haryana***[2]***.*** The other contention of the learned counsel for the petitioner is that even if it is presumed that the Collector has jurisdiction, it shall be exercised within a period of five years as provided under Section 41-A of the Act, which deals with recovery of stamp duty not levied or short levied.

From a perusal of Sections 41-A and 47-A of the Act, it is clear

that if the registering authority entertains any doubt, he shall register the document and prefer a reference to the Collector under Sub-Section (1) of Section 47-A of the Act, and upon which, the Collector shall determine the market value and direct the person to pay the stamp duty, if it is found to be not paid. Though there is no time limit for referring the matter to the Collector by the registering authority under Sub-section (1) of Section
47-A of the Act, the said reference shall be within a reasonable time. Even as per Sub-Section (3) of Section 47-A of the Act, the Collector can exercise suo motu powers for determining the market value within a period of two years from the date of the registration of the document. So, it is clear that exercise of powers by the second respondent after a long lapse of eight years from the registration is unjustified. Therefore, this Court finds force in the contentions of the learned counsel for the petitioner. As no counter is filed by the respondents despite granting sufficient time, and as no arguments were advanced by the learned Government Pleader rebutting the contentions put forth by the learned counsel for the petitioner, this Court is left with no other option but to accept the contentions of the learned counsel for the petitioner.

Accordingly, the writ petition is allowed and the judgment and decree dated 21.10.1997 passed by the first respondent in C.M.A.No.7 of 1995, and the order dated 26.06.1995 passed by the second respondent are hereby set aside. There shall be no order as to costs.

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09.04.2007

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[1] 1998(2) ALD 793

[2] 2001(2) Indian Civil Cases 484